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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,075	10/20/2003	Toshifumi Masaki	1232-5178	4876
27123 7590 05/27/2008 MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
EXAMINER HOEKSTRA, JEFFREY GERDEN				
ART UNIT 3736		PAPER NUMBER		
NOTIFICATION DATE 05/27/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOPatentCommunications@Morganfinnegan.com  
Shopkins@Morganfinnegan.com  
jmedina@Morganfinnegan.com

### Office Action Summary

**Application No.**

10/690,075

**Applicant(s)**

MASAKI, TOSHIFUMI

**Examiner**

JEFFREY G. HOEKSTRA

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 5-10 is/are pending in the application.  
4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1, 9 and 10 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Notice of Amendment***

1. In response to the amendment filed on 02/29/2008, amended claim(s) 1, canceled claim(s) 2-4, withdrawn claim(s) 5-8, and new claim(s) 9-10 is/are acknowledged. The current rejections of the claim(s) 1 is/are *withdrawn*. The following new and reiterated grounds of rejection are set forth:

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Takagi (US 5,727,551).

4. Takagi discloses a non-contact tonometer (Abstract, column 2 lines 43-64) as broadly as structurally claimed, comprising:

- an alignment light source (11) (as best seen in Figure 1) for emitting a light flux for alignment of a cornea (C) of an eye (E) to be examined (column 3 lines 63-67);
- a projection optical system (15 and 16) (as best seen in Figure 1) for projecting the light flux from the alignment light source onto the cornea of the eye to be examined (column 27-39);

- an image capture means for sensing an image (27) (as best seen in Figure 1) obtained from a reflected alignment light flux which is the light flux projected onto and reflected by the cornea of the eye to be examined (column 4 lines 23-26);
- a means for deforming the cornea of the eye to be examined (70) (as best seen in Figure 4) by blowing pressurized air onto the cornea of the eye to be examined (column 1 lines 34-54 and column 4 lines -11);
- an intraocular pressure measurement light source (31) (as best seen in Figure 1) for emitting a measurement light flux for measurement of an intraocular pressure of the eye to be examined (column 4 lines 27-39), wherein the projection optical system projects the measurement light flux from the intraocular pressure measurement light source onto the cornea of the eye to be examined (as best seen in Figure 1);
- an intraocular pressure measurement light receiving means for detecting a reflected measurement light flux (54) (as best seen in Figure 1) which is the measurement light flux projected onto and reflected by the cornea of the eye to be examined (column 5 lines 49-64); and
- a CPU (87) (column 6 line 27 – column 8 line 11) (as best seen in Figure 4) capable of determining a reliability level of an output signal which is output from the intraocular pressure measurement light receiving means in comparison with a reference level which is varied on the basis of an intensity of the image sensed by the image capture means, capable of varying the reference level by assigning the intensity of the image sensed by the image capture means to a predetermined conversion formula, and capable of obtaining a peak value from output signals which

are time-series signals output from the intraocular pressure measurement light receiving means, and determines a warning level or an error level of signals output from the intraocular pressure measurement light receiving means by comparing the reference level with the peak value.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1 and 9-10 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Badehi et al. (6,673,014 B2) and Miwa et al. (US 5,532,769) disclose non contact tonometers operating with optical systems, multiple light sources, pressure measurement systems, and microprocessors.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.H./

Jeff Hoekstra  
Examiner, Art Unit 3736

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736